

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION**

MIKE HARRIS and JEFF DUNSTAN,
individually and on behalf of a class of
similarly situated individuals,

Plaintiffs,

v.

COMSCORE, INC., a Delaware corporation,

Defendant.

Case No. 1:11-cv-5807

Hon. James F. Holderman

Magistrate Judge Young B. Kim

PLAINTIFFS' MOTION TO FILE DOCUMENTS UNDER SEAL

Plaintiffs Mike Harris and Jeff Dunstan ("Plaintiffs"), pursuant to Federal Rule of Civil Procedure 5.2 and Local Rules 5.8 and 26.2, respectfully move the Court for an Order granting them leave to file certain documents under seal, either in whole or in part, in conjunction with Plaintiffs' Motion for Partial Summary Judgment. In support of this Motion, Plaintiffs state as follows:

1. On February 20 and 21, 2014, concurrently with the filing of this Motion, Plaintiffs filed their Motion for Partial Summary Judgment (the "Summary Judgment Motion"), their supporting Memorandum of Law (the "Memorandum"), their Local Rule 56.1 Statement of Undisputed Material Facts in Support of Their Motion for Partial Summary Judgment (the "Statement of Facts"), and the Declaration of Benjamin S. Thomassen (the "Thomassen Declaration") in support of the Summary Judgment Motion.

Documents and Exhibits Containing PII of Known Minors

2. First, the Memorandum, Statement of Facts, and Thomassen Declaration quote and/or reference material from Defendant comScore, Inc.'s ("comScore") document production in this matter that includes the personally identifiable information ("PII") of a known minor.

3. Pursuant to Federal Rule of Civil Procedure 5.2(a), Plaintiffs have redacted all references to the known minor's name from all publicly filed versions of the Memorandum, Statement of Facts, and Thomassen Declaration, but also seek leave to file all potential PII attributable to the known minor (including, for example, the minor's Facebook.com user ID information and birth year) under seal.

4. Plaintiffs also seek leave to file Exhibit 31 to the Thomassen Declaration partially under seal. Exhibit 31 was created over the course of Plaintiffs' investigation in this matter, and was generated by using the PII of a minor. Pursuant to Federal Rule of Civil Procedure 5.2(a), Plaintiffs have redacted all references to the known minor's name from Exhibit 31, but also seek leave to file under seal all other information that is personally identifying, including the minor's Facebook.com UserID, user name, and personal pictures.

Documents and Exhibits Marked as Confidential by comScore

5. Second, attached to the Thomassen Declaration, among other exhibits, are the following documents that Defendant comScore, Inc. ("comScore") has marked "CONFIDENTIAL" or "CONFIDENTIAL—ATTORNEYS' EYES ONLY" pursuant to the January 20, 2012 Protective Order entered by Magistrate Judge Kim in this case (the "Protective Order") (Dkt. 72):

- a. Exhibit 1: Excerpts from the November 21, 2013 Deposition of comScore's Vice President of Panel Operations, John O'Toole;
- b. Exhibit 2: Excerpts from the November 20, 2013 Deposition of comScore's Director of Technology, Yvonne Bigbee;
- c. Exhibit 3: Excerpts from the August 15, 2012 Rule 30(b)(6) Deposition of comScore's Chief Technology Officer, Michael Brown. While comScore has marked the entirety of Mr. Brown's deposition transcript as "CONFIDENTIAL—ATTORNEYS' EYES ONLY," comScore also previously consented to the public filing of certain pages from the

transcript in unredacted form—many of which appear in Exhibit 3 (*See* Dkt. 150-1 at ¶¶ 3–4);

- d. Exhibit 6: Excerpts from the January 24, 2014 Rule 30(b)(6) Deposition of comScore’s Vice President of Financial Planning and Analysis, Scott Mitchell;
- e. Exhibit 7: Excerpts from the January 24, 2014 Rule 30(b)(6) Deposition of comScore’s Vice President of Panel Operations, John O’Toole;
- f. Exhibit 8: PowerPoint file bearing Bates number “CS0081903_Confidential--Attorney’s Eyes Only.pptx”;
- g. Exhibit 9: Excerpts from the December 13, 2013 Deposition of comScore’s Chief Research Officer, Joshua Chasin;
- h. Exhibit 10: Excerpts from the September 12, 2012 Deposition of comScore’s Director of Technology, Yvonne Bigbee. While comScore has marked the entirety of Ms. Bigbee’s deposition transcript as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” comScore also previously consented to the public filing of certain pages from the transcript in unredacted form—some of which appear in Exhibit 10 (*See* Dkt. 150-1 at ¶¶ 3–4);
- i. Exhibit 12: Excerpts from the December 13, 2012 Deposition of Colin O’Malley. While comScore has marked the entirety of Mr. O’Malley’s deposition transcript as “CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” comScore also previously consented to the public filing of certain pages from the transcript in unredacted form—some of which appear in Exhibit 12 (*See* Dkt. 150-1 at ¶¶ 3–4);
- j. Exhibit 13: Excerpts from the December 3, 2013 Deposition of comScore’s Deputy Privacy Officer, Richard Weaver;
- k. Exhibit 14: Excerpts from the November 14, 2013 Deposition of comScore’s Senior Director of Quality Assurance, Glenn Marchione;
- l. Exhibit 15: Email correspondence bearing Bates number “CS0035637_Confidential--Attorney’s Eyes Only.htm”;
- m. Exhibit 17: Excerpts from the October 25, 2012 Deposition of Don Waldhalm;
- n. Exhibit 18: An internal JIRA ticket bearing Bates number “CS0017688_Confidential--Attorney’s Eyes Only.pdf”;

- o. Exhibit 19: Email correspondence bearing Bates number “CS0076561_Confidential--Attorney’s Eyes Only.htm”;
- p. Exhibit 20: Email correspondence bearing Bates number “CS0081698_Confidential.htm”;
- q. Exhibit 21: Email correspondence bearing Bates number “CS0081713_Confidential.htm”;
- r. Exhibit 22: Excerpts from the November 22, 2013 Deposition of comScore’s Panel Operations Manager, Latoya Peterson-Renfrow;
- s. Exhibit 23: Excerpts from the November 13, 2013 Deposition of comScore’s Director of Software Engineering, Steven Chase;
- t. Exhibit 24: Excerpts from the January 23, 2014 Rule 30(b)(6) Deposition of comScore’s Chief Technology Officer, Michael Brown;
- u. Exhibit 25: Email correspondence bearing Bates number “CS0042536_Confidential--Attorney’s Eyes Only.htm”;
- v. Exhibit 26: Email correspondence bearing Bates number “CS0071631_Confidential--Attorney’s Eyes Only.htm”;
- w. Exhibit 29: Email correspondence bearing Bates number “CS0082285_Confidential--Attorney’s Eyes Only.htm”; and
- x. Exhibit 30: Excerpts from a document bearing Bates Number “CS0096108_Confidential--Attorney’s Eyes Only.docx.”

6. The Protective Order prohibits either Party from publicly disclosing documents marked as “CONFIDENTIAL,” “CONFIDENTIAL—ATTORNEYS’ EYES ONLY,” or “Highly Confidential—Source Code.” (Dkt. No. 72 at ¶¶ 7, 9.)

7. Accordingly, and pursuant to comScore’s “CONFIDENTIAL” and “CONFIDENTIAL—ATTORNEYS’ EYES ONLY” designations and the Protective Order entered in this case, Plaintiffs seek leave to file Exhibits 1, 2, 6–9, 13–15, 17–26, 29, and 30, described *supra*, ¶ 2, entirely under seal, and Exhibits 3, 10, and 12, described *supra*, ¶ 2, partially under seal.

8. Additionally, because the Memorandum, Statement of Facts, and Thomassen Declaration quote and otherwise reference material from the Exhibits discussed *supra*, ¶¶ 4-6, Plaintiffs seek leave to file those documents partially under seal.

WHEREFORE, Plaintiffs Mike Harris and Jeff Dunstan respectfully move the Court, pursuant to Local Rules 5.8 and 26.2 for an Order:

- (i) Granting them leave to file entirely under seal Exhibits 1, 2, 6–9, 13–15, 17–26, 29, and 30 to the Thomassen Declaration;
- (ii) Granting them leave to file partially under seal Exhibits 3, 10, 12, and 31 to the Thomassen Declaration, as well as Plaintiffs’ Memorandum of Law in Support of Their Motion for Partial Summary Judgment, Plaintiffs’ Local Rule 56.1 Statement of Undisputed Material Facts in Support of Their Motion for Partial Summary Judgment, and the Declaration of Benjamin S. Thomassen; and
- (ii) Awarding such other and further relief as the Court deems equitable and just.

Dated: February 21, 2014

Respectfully submitted,

MIKE HARRIS and JEFF DUNSTAN,
individually and on behalf of all others
similarly situated,

By: s/ J. Dominick Larry
One of Plaintiffs’ Attorneys

Jay Edelson
jedelson@edelson.com
Rafey S. Balabanian
rbalabanian@edelson.com
Benjamin S. Thomassen
bthomassen@edelson.com
J. Dominick Larry
nlarry@edelson.com
EDELSON PC
350 North LaSalle Street, Suite 1300

Chicago, Illinois 60654
Tel: 312.589.6370
Fax: 312.589.6378

Attorneys for Plaintiffs, the Class, and the Subclass

CERTIFICATE OF SERVICE

I, J. Dominick Larry, an attorney, certify that on February 21, 2014, I served the above and foregoing ***Plaintiffs' Motion to File Documents Under Seal***, by causing true and accurate copies of such paper to be filed and transmitted to all counsel of record via the Court's CM/ECF electronic filing system.

s/ J. Dominick Larry _____